

AMENDED IN SENATE AUGUST 22, 2011

SENATE BILL

No. 388

Introduced by Senator Gaines

February 15, 2011

~~An act to amend Section 2945 of the Civil Code, relating to mortgages.~~ *An act to amend Section 34162 of the Health and Safety Code, relating to redevelopment, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 388, as amended, Gaines. ~~Mortgage foreclosure consultants.~~ *Redevelopment: Emergency Refunding Bonds.*

Existing law suspends various activities of redevelopment agencies and prohibits the agencies from incurring indebtedness, including, but not limited to, issuing or selling bonds, for a specified period. Notwithstanding this provision of law, existing law authorizes an agency to issue Emergency Refunding Bonds only where the issuance is the only means available to the agency to avoid default on outstanding agency bonds, and if other conditions are met.

This bill would additionally authorize an agency to issue Emergency Refunding Bonds if issuance is the only means available to the agency to avoid a default on lines of credit obtained from a financial institution. The bill would modify the other conditions of issuance accordingly.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law generally regulates mortgage foreclosure consultants, as defined. Existing law states that it is the intent of the Legislature in those regulatory provisions to require that foreclosure consultant service agreements be expressed in writing, to safeguard the public against~~

~~deceit and financial hardship, to permit rescission of foreclosure consultation contracts, to prohibit representations that tend to mislead, and to encourage fair dealing in the rendition of foreclosure services.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 34162 of the Health and Safety Code is
2 amended to read:

3 34162. (a) Notwithstanding Part 1 (commencing with Section
4 33000), Part 1.5 (commencing with Section 34000), Part 1.6
5 (commencing with Section 34050), and Part 1.7 (commencing
6 with Section 34100), or any other law, commencing on the effective
7 date of this act, an agency shall be unauthorized and shall not take
8 any action to incur indebtedness, including, but not limited to, any
9 of the following:

10 (1) Issue or sell bonds, for any purpose, regardless of the source
11 of repayment of the bonds. As used in this section, the term
12 “bonds,” includes, but is not limited to, any bonds, notes, bond
13 anticipation notes, interim certificates, debentures, certificates of
14 participation, refunding bonds, or other obligations issued by an
15 agency pursuant to Part 1 (commencing with Section 33000), and
16 Section 53583 of the Government Code, pursuant to any charter
17 city authority or any revenue bond law.

18 (2) Incur indebtedness payable from prohibited sources of
19 repayment, which include, but are not limited to, income and
20 revenues of an agency’s redevelopment projects, taxes allocated
21 to the agency, taxes imposed by the agency pursuant to Section
22 7280.5 of the Revenue and Taxation Code, assessments imposed
23 by the agency, loan repayments made to the agency pursuant to
24 Section 33746, fees or charges imposed by the agency, other
25 revenues of the agency, and any contributions or other financial
26 assistance from the state or federal government.

27 (3) Refund, restructure, or refinance indebtedness or obligations
28 that existed as of January 1, 2011, including, but not limited to,
29 any of the following:

1 (A) Refund bonds previously issued by the agency or by another
2 political subdivision of the state, including, but not limited to,
3 those issued by a city, a housing authority, or a nonprofit
4 corporation acting on behalf of a city or a housing authority.

5 (B) Exercise the right of optional redemption of any of its
6 outstanding bonds or elect to purchase any of its own outstanding
7 bonds.

8 (C) Modify or amend the terms and conditions, payment
9 schedules, amortization or maturity dates of any of the agency's
10 bonds or other obligations that are outstanding or exist as of
11 January 1, 2011.

12 (4) Take out or accept loans or advances, for any purpose, from
13 the state or the federal government, any other public agency, or
14 any private lending institution, or from any other source. For
15 purposes of this section, the term "loans" include, but are not
16 limited to, agreements with the community or any other entity for
17 the purpose of refinancing a redevelopment project and moneys
18 advanced to the agency by the community or any other entity for
19 the expenses of redevelopment planning, expenses for
20 dissemination of redevelopment information, other administrative
21 expenses, and overhead of the agency.

22 (5) Execute trust deeds or mortgages on any real or personal
23 property owned or acquired by it.

24 (6) Pledge or encumber, for any purpose, any of its revenues or
25 assets. As used in this part, an agency's "revenues and assets"
26 include, but are not limited to, agency tax revenues, redevelopment
27 project revenues, other agency revenues, deeds of trust and
28 mortgages held by the agency, rents, fees, charges, moneys,
29 accounts receivable, contracts rights, and other rights to payment
30 of whatever kind or other real or personal property. As used in this
31 part, to "pledge or encumber" means to make a commitment of,
32 by the grant of a lien on and a security interest in, an agency's
33 revenues or assets, whether by resolution, indenture, trust
34 agreement, loan agreement, lease, installment sale agreement,
35 reimbursement agreement, mortgage, deed of trust, pledge
36 agreement, or similar agreement in which the pledge is provided
37 for or created.

38 (b) Any actions taken that conflict with this section are void
39 from the outset and shall have no force or effect.

(c) Notwithstanding subdivision (a), a redevelopment agency may issue refunding bonds, which are referred to in this part as Emergency Refunding Bonds, only where all of the following conditions are met:

(1) The issuance of Emergency Refunding Bonds is the only means available to the agency to avoid a default on outstanding agency bonds *or lines of credit obtained from a financial institution.*

(2) Both the county treasurer and the Treasurer have approved the issuance of Emergency Refunding Bonds.

(3) Emergency Refunding Bonds are issued only to provide funds for any single debt service payment that is due prior to October 1, 2011, and that is more than 20 percent larger than a level debt service payment would be for that bond, *or, in the case of a line of credit obtained from a financial institution, for which the line of credit expires prior to October 1, 2011, and payment is due.*

(4) The principal amount of outstanding agency bonds is not increased, *except if Emergency Refunding Bonds are issued for the purpose of paying off a line of credit as allowed pursuant to paragraph (3) and, in that case, only in an amount that corresponds to the amount of the line of credit payment, as well as the costs of issuance of the Emergency Refunding Bonds and a reserve fund for the Emergency Refunding Bonds.*

SEC. 2. *This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:*

In order to avoid redevelopment agency default on lines of credit obtained from a financial institution, it is necessary that this act take effect immediately.

~~SECTION 1. Section 2945 of the Civil Code is amended to read:~~

~~2945. (a) The Legislature finds and declares that homeowners whose residences are in foreclosure are subject to fraud, deception, harassment, and unfair dealing by foreclosure consultants from the time a Notice of Default is recorded pursuant to Section 2924 until the time surplus funds from any foreclosure sale are distributed to the homeowner or his or her successor. Foreclosure consultants represent that they can assist homeowners who have~~

1 defaulted on obligations secured by their residences. These
2 foreclosure consultants, however, often charge high fees, the
3 payment of which is often secured by a deed of trust on the
4 residence to be saved, and perform no service or essentially a
5 worthless service. Homeowners, relying on the foreclosure
6 consultants' promises of help, take no other action, are diverted
7 from lawful businesses that could render beneficial services, and
8 often lose their homes, sometimes to the foreclosure consultants
9 who purchase homes at a fraction of their value before the sale.
10 Vulnerable homeowners are increasingly relying on the services
11 of foreclosure consultants who advise the homeowner that the
12 foreclosure consultant can obtain the remaining funds from the
13 foreclosure sale if the homeowner executes an assignment of the
14 surplus, a deed, or a power of attorney in favor of the foreclosure
15 consultant. This results in the homeowner paying an exorbitant
16 fee for a service when the homeowner could have obtained the
17 remaining funds from the trustee's sale from the trustee directly
18 for minimal cost if the homeowner had consulted legal counsel or
19 had sufficient time to receive notices from the trustee pursuant to
20 Section 2924j regarding how and where to make a claim for excess
21 proceeds.

22 (b) The Legislature further finds and declares that foreclosure
23 consultants have a significant impact on the economy of this state
24 and on the welfare of its citizens.

25 (c) The intent and purposes of this article are the following:

26 (1) To require that foreclosure consultant service agreements
27 be expressed in writing; to safeguard the public against deceit and
28 financial hardship; to permit rescission of foreclosure consultation
29 contracts; to prohibit representations that tend to mislead; and to
30 encourage fair dealing in the rendition of foreclosure services.

31 (2) The provisions of this article shall be liberally construed to
32 effectuate this intent and to achieve these purposes.